

REMARKS

Applicants respectfully request reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow. After amending the claims as set forth above, claims 1, 6-7, and 9-22 are now pending in this application.

Applicants wish to thank the Examiner for the careful consideration given to the claims.

Rejection of claims 1-2 and 7-8 based on Richardson

Claims 1-2 and 7-8 are rejected under 35 U.S.C. 102(b) as allegedly being anticipated by U.S. Patent 5,954,123 (“Richardson”). For at least the following reasons, this rejection is traversed.

Claim 1 (as amended) recites, among other things, a metal side-plate comprising at least one weakened area. The at least one weakened area comprises perforations formed in material of the metal side-plate such that a network of webs is formed. The material of the metal side-plate is weakened by the at least one weakened area in such a way as to allow compensation for thermal expansion of the radiator body. The network of webs delimits lozenges that are arranged such that acute tips of the lozenges point in a longitudinal extent of the metal side-plate. Richardson does not teach or suggest this combination of features.

For instance, Richardson does not teach or suggest a network of webs or a network of webs that delimits lozenges that are arranged such that acute tips of the lozenges point in a longitudinal extent of the metal side-plate. Richardson merely discloses the use of a relatively wide gap to relieve thermal stress between the pipes 6 and the side support 4 of Richardson. (Column 3, lines 28-34 of Richardson.) The gap of Richardson may take the form of a V-shape, a chevron-shape, or a straight cut (Figs. 2-8 of Richardson) but no network of webs is formed. Because Richardson does not teach or suggest a network of webs, Richardson does not teach or suggest all the features of claim 1.

Claims 2 and 8 are canceled, which renders the rejection of these claims moot.

Claim 7 depends from and contains all the features of claim 1, and is allowable for the same reasons as claim 1, without regard to the further patentable features contained therein.

For at least these reasons, favorable reconsideration of the rejection is respectfully requested.

Rejection of claims 1-8 based on Kodumudi

Claims 1-3 and 7-8 are rejected under 35 U.S.C. 102(e) as allegedly being anticipated by U.S. Patent 6,736,193 (“Kodumudi”). Claims 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kodumudi. For at least the following reasons, these rejections are traversed.

Claim 1 (as amended) recites, among other things, a metal side-plate comprising at least one weakened area. The at least one weakened area comprises perforations formed in material of the metal side-plate such that a network of webs is formed. The material of the metal side-plate is weakened by the at least one weakened area in such a way as to allow compensation for thermal expansion of the radiator body. The network of webs delimits lozenges that are arranged such that acute tips of the lozenges point in a longitudinal extent of the metal side-plate. Kodumudi does not teach or suggest this combination of features.

For instance, Kodumudi does not teach or suggest a network of webs that delimits lozenges that are arranged such that acute tips of the lozenges point in a longitudinal extent of the metal side-plate. At best, Kodumudi discloses a region of a side plate adapted to break under relatively low tension by perforating a V-shaped region of a side plate with holes 52. (Fig. 10 of Kodumudi.) There is nothing in Kodumudi to teach or suggest a network of webs delimiting lozenges. It is asserted (in relation to now canceled claim 4) that “it would have been obvious...to give the perforations any desired shape and proportions as determined by the size and expected temperature ranges to be used in the heat exchanger.” (Paragraph 5 of the Office Action.) A rejection based on this assertion is improper because no prior art has been set forth providing a teaching of a network of webs delimiting lozenges.

The Supreme Court in *KSR Int'l Co. v. Teleflex, Inc.*, 127 S.Ct. 1727 (2007) has not removed the requirement that the prior art reference (or references when combined) must teach or suggest all the claim limitations. Indeed, *KSR* emphasized cases where all features are known.¹ Furthermore, the exemplary rationales listed in MPEP 2143 suggests that all elements (when the references are combined) need to be known in the art to support a

¹ The Supreme court noted three cases *United States v. Adams*, 383 U.S. 39 (1966), *Anderson's-Black Rock, Inc. v. Pavement Salvage Co.*, 396 U.S. 57 (1969), and *Sakraida v. AG Pro, Inc.*, 425 U.S. 273 (1976) which all dealt with the issue of whether known elements combined together would be obvious. These statements reinforce the concept that the elements of the claim have to be known in the art before they are determined to be combinable or not.

conclusion of obviousness.² Thus, the PTO is not relieved of its responsibility of finding prior art teaching or suggesting all the features of the claimed invention to establish a *prima facie* case of obviousness. Thus, the assertion that “it would have been obvious...to give the perforations any desired shape and proportions” is not sufficient to establish a case of *prima facie* of obviousness because no prior art has been set forth that teaches or suggests a network of webs that delimits lozenges that are arranged such that acute tips of the lozenges point in a longitudinal extent of the metal side-plate.

Because Kodumudi does not teach or suggest a network of webs that delimits lozenges and no other prior art has been set forth teaching such a network, claim 1 is allowable over the prior art.

Claims 2-5 and 8 are canceled, which renders the rejection of these claims moot.

Claims 6-7 depend from and contain all the features of claim 1, and are allowable for the same reasons as claim 1, without regard to the further patentable features contained therein.

For at least these reasons, favorable reconsideration of the rejections is respectfully requested.

Rejection of claims 3-6 based on Kodumudi and Bosch

Claims 3-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kodumudi in view of GB 1,592,125 (“Bosch”). For at least the following reasons, this rejection is traversed.

Claims 3-5 have been canceled, which renders the rejection of these claims moot.

² For example, if a finding that all claim elements were known in the prior art cannot be made, then the rationale of combining prior art elements according to known methods cannot be used. If a finding that the substitution of one known element for another known element (which suggests a teaching of the known elements in the prior art) cannot be made, then the rationale of simple substitution of one known element for another cannot be used. If a finding that a method of enhancing a particular class of devices, methods or products based upon the teaching of such an improvement in other situations cannot be made, then the rationale of the use of known techniques to improve similar devices in the same way cannot be used. If a finding that a particular known technique was recognized in the art (which suggests a teaching of the technique in the prior art) cannot be made, then the rationale of applying a known technique to a known device, method, or product ready for improvement cannot be used. If a finding that there are known options with the grasp of a person of ordinary skill (which suggests a teaching of the known options in the prior art) cannot be made, then the rationale of obvious to try cannot be used. If a finding that design incentives or other market forces could have prompted one of ordinary skill to vary the prior art in a predictable manner (which suggests a teaching of the predictable manner in the prior art) cannot be made, then the rationale of the known work in one field of endeavor may prompt variations of it for use in either the same field or a different one cannot be used. If a finding that a person of ordinary skill in the art would have been motivated to combine the prior art to achieve the claimed invention (which suggests that the prior art when combined teaches all the elements of the claimed invention) cannot be made, then the rationale of some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify or combine prior art reference teachings cannot be used.

Claim 6 depends from and contains all the features of claim 1. As previously mentioned, Kodumudi does not teach or suggest a network of webs that delimits lozenges that are arranged such that acute tips of the lozenges point in a longitudinal extent of the metal side-plate, as recited in claim 1, and no other prior art has been set forth teaching such a network of webs. Bosch does not cure the deficiencies of Kodumudi because Bosch does not teach or suggest lozenges that are arranged such that acute tips of the lozenges point in a longitudinal extent of the metal side-plate. Thus, no combination of Kodumudi and Bosch teaches or suggests all the features of claim 1 or its dependent claim 6.

For at least these reasons, favorable reconsideration of the rejection is respectfully requested.

Allowability of claims 9-22

Claims 9-16 depend from and contain all the features of claim 1, and are allowable for the same reasons as claim 1, without regard to the further patentable features contained therein.

Claim 17 recites, among other things, a heat exchanger comprising: a radiator body comprising tubes and heat exchanger surfaces extending between the tubes; and at least one metal side-plate arranged laterally on the radiator body or arranged on a side of the radiator body. The metal side-plate comprises at least one weakened area. The at least one weakened area comprises perforations formed in material of the metal side-plate such that a network of webs is formed. The material of the metal side-plate is weakened by the at least one weakened area in such a way as to allow compensation for thermal expansion of the radiator body. The network of webs delimits lozenges that are arranged such that acute tips of the lozenges point in a longitudinal extent of the metal side-plate. None of the cited prior art teaches or suggests these combination of features. For example, none of Richardson, Kodumudi, and Bosch teaches or suggests a network of webs that delimits lozenges that are arranged such that acute tips of the lozenges point in a longitudinal extent of the metal side-plate. Accordingly, claim 17 and its dependent claims 18-22 are allowable for at least this reason.

Allowance of claims 9-22 is respectfully requested.

CONCLUSION

Applicants believe that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing or a credit card payment form being unsigned, providing incorrect information resulting in a rejected credit card transaction, or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicants hereby petition for such extension under 37 C.F.R. §1.136 and authorize payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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